



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,650	03/19/2004	Kurt Schwarzwald	1049.016D1	7763
25215 7590 05/23/2007 DOBRUSIN & THENNISCH PC 29 W LAWRENCE ST SUITE 210 PONTIAC, MI 48342			EXAMINER HUSON, MONICA ANNE	
			ART UNIT 1732	PAPER NUMBER
			MAIL DATE 05/23/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/804,650

Applicant(s)

SCHWARZWALDER ET AL.

Examiner

Monica A. Huson

Art Unit

1732

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-12 and 21-28.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: although applicant does not believe that the prior art of record suggests the instant invention, the examiner maintains her rejections.

Applicant contends that Tilton does not show the instant invention because he does not show providing a primary extrusion in a solid state. This is not persuasive because Tilton clearly discloses that his film is formed in a continuous operation, which clearly implies extrusion.

Applicant contends that Tilton does not show the instant invention because he does not show compressing the molten zone, after formation thereof, between a pressing unit and a die cavity. This is not persuasive because after the molten zone is created by the first die, the second die applies pressure to the molten zone (as well as the solid portion) of the article.

Applicant contends that Gray and Rasmussen do not show the instant invention because Rasmussen does not show a pressing unit that compresses a polymeric material such that it takes the shape of the mold cavity. This is not persuasive because Figure 7 clearly shows the film being pressed (i.e. deflected) into the cavity 34 to take its shape.

Applicant contends that Gray and Rasmussen are not properly combinable because since Gray uses air pressure for compression while Rasmussen uses a pressing unit (i.e. die), the combination would destroy the disclosure of Gray. This is not persuasive because both disclosures describe a step where a polymeric film is compressed into an aperture or cavity. It is being interpreted that the use of air pressure and the use of an opposite protrusion to force the film into the cavity are functionally equivalent.

Applicant contends that Gray and Rasmussen do not show the instant invention because Rasmussen does not show an in-line process. This is not persuasive because in Figure 2, the direction of the film feed is indicated by the left-pointing arrow. Although Rasmussen mentions several times that the extruder is not shown, it is being interpreted that the film is fed directly from the extruder to the postforming apparatus along the feed direction of the left-pointing arrow. Also see Rasmussen, Column 5, lines 57-59.

Applicant contends that it is unreasonable to interpret Tilton's element 28 as an upper die and a mandrel. This is not persuasive because the claim is not exclusive to a mold element acting as both an upper die and a mandrel.

Applicant contends that the Office Action fails to address the claim limitations of claim 7. This is not persuasive because, as previously noted, it is being interpreted that the particular structures that are not specifically mentioned in the rejection do not have an effect on the step-wise claim limitations. It is noted that a particular structure must have a step-wise affect on the method steps and not amount to mere claiming of a particular structure.

Applicant contends that the process of Tilton would "likely" destroy the process of Gray. This is not persuasive because there is no particular evidence of this assertion, and arguments of counsel cannot take the place of evidence in the record (MPEP 2145).

Applicant contends that Tilton and Gray are not properly combinable. This is not persuasive because both disclosures are concerned with planar thermoforming processes with varying methods of applying a particular shape to a polymeric film. It is maintained that their combined disclosures suggest the instant invention.

Applicant contends that the Office Action never asserts the subject matter of claim 11. This is not persuasive because it is being interpreted that Gray's compression areas are places where the pressing unit of Gray (i.e. air pressure) has compressed the film into the particular shape of the corresponding cavity.

Applicant contends that Gray does not show the advancement of the polymeric film from a zone heating area to a compression area. This is not persuasive because zone heating takes place at the left-most section 21a, then the film is advanced and compressed at any of the areas 22a which are to the right of the first zone heating area.

Applicant contends that the heating units of Franz are not separate from the section mold unit. This is not persuasive because although applicant contends that Franz's heating units are "typically integrated with whatever elements those heaters are designed to heat", the examiner cannot find any indication that this is the case in Franz's disclosure. In fact, Franz describes the heating of the mold at Column 7, lines 52-53 in such a way that indicates that the heating portion is not part of the mold, but rather separate, as depicted in Figure 2b.

Monica A Huson

Monica A Huson
May 19, 2007